IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4236 of 1988

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ILABEN GAURISHANKER TRIVEDI

Versus

RANUJ KELAVANI MANDAL

Appearance:

1. Special Civil Application No. 4236 of 1988

MR NK MAJMUDAR for Petitioner No. 1

MS MITA PANCHAL, AGP for respondents

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 11/06/2003

ORAL JUDGEMENT

#. By this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the order of termination dated 25.6.1988, interalia

contending that it is unjust, illegal, unconstitutional and unsustainable.

#. The material facts leading to rise of this petition may shortly be outlined and articulated at this juncture with a view to appreciate the merits of the petition and challenge against the impugned order. The petitioner came to be appointed as a Junior Clerk by virtue of an appointment order dated 12.2.1984 on probation. The respondent authority, by passing an order on 25.6.1988, terminated the service of the petitioner and paid three months' salary by way of demand draft dated 25.6.1988 which is under challenge in this petition. It may be mentioned at this stage that earlier also, on challenge being made against the termination order of the petitioner, this Court, while allowing Special Civil Application No.5746 of 1986, directed the respondent-authority to afford an opportunity of hearing to the petitioner and then to pass appropriate order. After considering the facts and circumstances and affording an opportunity of hearing to the petitioner, fresh order of termination came to be passed during the period of her probation. Again, said termination order is questioned by petitioner by way of instant Special Civil Application.

#. Having heard the learned counsel appearing for the parties, and considering the facts and circumstances, and relevant proposition and principles of law, and jurisprudence in so far as the rights of a probationer are concerned, this Court is fully satisfied that the impugned order, by no stretch of imagination, can be said to be arbitrary, unjust, or against the provisions of law. There is no dispute about the fact that the petitioner came to be appointed as a Junior Clerk on 12.2.1984 in Ranuj Purush Adhyapan Mandir on probation for a period of two years. There is no dispute that the termination order is passed during the period of probation without casting any stigma or aspersions on the service life or record of the petitioner. Therefore, there cannot be any objection or any illegality in passing the order of termination during the period of probation. It is the right of a master or management concerned to assess the work performance of the employee and to find out as to whether the work done by the delinquent during the period of probation is satisfactory or otherwise. In case if the master or the management comes to a conclusion on assessment of service record of the employee concerned that it is not satisfactory, then without assigning any reason or any ground, service can be terminated during the probation period without casting

any stigma. This proposition of law is very well established and propounded and settled by catena of judicial pronouncements. The latest decision on this point is rendered by the Apex Court in the case of Mathew P.Thomas v. Kerala State Civil Supply Corporation Ltd. and others reported in (2003)3 SCC 263 wherein it has been held that the termination of a probationer, without any stigma or any charge of misconduct, finding the services unsatisfactory, can be done. In short, if a termination order is recorded against an employee during the period of probation, it cannot be said to be stigmatic or punitive, if any stigma is not cast upon the delinquent, and it is the right of the master or the management. The purpose and design of retaining a person on probation is to consider and assess the usefulness and viability and suitability of the persons concerned and if the work is found unsatisfactory during the course of probation before the order of long term service is passed or confirmation order is made, the master or the management is at liberty to reconsider the relationship of master and servant or to terminate the said relationship on unsatisfactory performance of the employee. This proposition of law, as stated above, is very well established and the case of the petitioner is squarely attracted and covered by catena of decisions.

#. In the result, the petitioner has no case or merit in questioning the order of termination which was passed while she was on probation and the order of termination is legal and valid and does not require any interference by this Court sitting under Article 226 of the Constitution of India. Consequently, the petition fails and deserves only one legal fate and that is of rejection. Accordingly, the petition is rejected. Rule is discharged leaving the parties to bear their own costs.

(J.N.Bhatt, Acting C.J.)

(sunil)